



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office

440 West 200 South, Suite 500

Salt Lake City, UT 84101

<http://www.blm.gov/ut/st/en.html>



IN REPLY REFER TO:
3100/(UT-922000)

February 15, 2013

CERTIFIED MAIL – 7009 1410 0001 9070 6850
Return Receipt Requested

DECISION

Shawn Ellis	:	Protest to the Inclusion Parcel
P.O. Box 336	:	UT0213-042 in the February 19, 2013
621 Millcreek Drive	:	Competitive Oil and Gas Lease Sale
Moab, Utah 84532	:	

Protest Denied

On November 16, 2012, the Bureau of Land Management (BLM) issued its Notice of Competitive Lease Sale (NCLS) providing notice to the public that certain parcels of land would be offered in a competitive oil and gas lease sale scheduled for February 19, 2013. In a letter received by the BLM on December 17, 2012, you protested parcel UT0213-042 listed in the NCLS.

You maintain that this parcel should be excluded since it is contiguous with parcel UT039, which was removed from the sale, and it is in the protection zone for San Juan County water. The BLM should defer leasing until the state engineer issues a decision on San Juan County wells in the area.

For the reasons set forth below, I have determined that the BLM complied with the requirements of the National Environmental Policy Act and other applicable Federal laws and regulations prior to the inclusion of the subject parcel in the February 19, 2013, lease sale. Consequently, your protest is denied.

As discussed in the environmental assessment (DOI-BLM-UT-Y010-2012-0190-EA) section 1.8.2 (as updated in February 2013), the BLM states that several scoping comments suggested that Parcels UT0213-039 and UT0213-042 were located within the aquifer serving the Moab Valley (the drinking water source protection zone). As a result, these parcels were reexamined for their proximity to that protection zone.

General groundwater protection is governed by standard operating procedures (SOPs) required by regulation and site-specific mitigation contained in an approved APD would be sufficient to isolate and protect all usable groundwater zones. The SOPs include the requirements for disposal of produced water contained in Onshore Oil and Gas Order (OOGO) No. 7 and the requirements

for drilling operations contained in OOGO No. 2. Potential usable water aquifers would be cased and cemented. The casing would be pressure tested to ensure integrity prior to drilling out the surface casing shoe plug. Potential impacts will be addressed and mitigated utilizing Utah Instruction Memorandum (IM) 2010-055 prior to APD approval. The purpose of this IM is to enhance the existing process for the continued protection of all usable ground water zones ($\leq 10,000$ mg/L as defined in Onshore Oil and Gas Order No. 2) associated with oil and gas exploration and development, will be followed. According to IM 2010-055, Sole Source Aquifers (SSAs) and Drinking Water Source Protection Zones (DWSPZs) are designated drinking water aquifers, and require additional analysis and protection. Prior to any drilling activity, a rigorous engineering review will be conducted for any down hole activities, and appropriate regulatory and mitigation measures will be applied. (Moab EA at Appendix C, Interdisciplinary Team Checklist).

A small portion of the northeast part of Parcel UT0213-039 was found to overlap the drinking water source protection zone, but not the Moab Sole Source Aquifer. As a result of this finding, plus potential conflicts with recreation and complex topography that, in addition to other potential conflicts, would make locating a well site difficult, this parcel [UT0213-039] was deferred.

Lease parcel UT0213-042 is not within any SSAs, but does overlie a DWSPZ associated with Kane Springs Well #2; however, this DWSPZ for this well is unrealistic and is not supported by geologic or hydro geologic information (personal communication with Division of Drinking Water, February 2013). Parcel UT0213-042 does not have potential for impact to ground water wells either at Kane Springs Rest Area (Kane Springs Rest Stop Wells # 1 and #2) held by the State of Utah Department of Transportation or the Glen Canyon Sole Source Aquifer (SSA).

The BLM continues and states in the EA section 1.8.2, that the San Juan Spanish Valley Special Services District currently has an application before the Utah State Engineer requesting 5000 acre-feet of ground water to develop municipal water in the vicinity of parcel UT0213-042, although currently proposed points of diversion are not within this parcel. A lease notice was added to this parcel for protection of drinking water, should that request be granted and the San Juan Spanish Valley Special Services District moves forward with their proposal.

Your protest fails to provide specific facts or information to show how your allegations apply to the protested parcel. It is well established that the BLM properly dismisses a protest where the protestant makes only conclusory or vague allegations or the protestant's allegations are unsupported by facts in the record or competent evidence. The BLM is under no obligation to sort through a protestant's list of alleged errors and attempt to discern which alleged errors the protestant intended to invoke for a particular parcel. Such an unduly burdensome and inefficient process would unreasonably divert the time and resources that the BLM otherwise needs to manage the public lands as mandated by Congress.

For the BLM to have a reasonable basis to consider future protests, you must identify the specific ground for protest and explain how it applies to the protested parcel. Any allegations of error based on fact must be supported by competent evidence. Further, you must consider whether any lease stipulations or notices that apply to a particular parcel may be relevant to your allegations, and explain how such stipulations or notices do not obviate the allegations. Failure to comply with any of the foregoing may result in the summary dismissal of the protest.

As the party challenging the BLM's inclusion of parcel UT0213-042 in the February 19, 2013 lease sale, you bear the burden of establishing that the BLM's action was premised on a clear error of law or material fact, or that the BLM failed to consider a substantial environmental question of material significance. You have not met this burden. To the extent that you raised any allegations not specifically discussed herein, they have been considered and are found to be without merit. For these reasons, your protest is denied.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and Form 1842-1 (Enclosure 1). If an appeal is taken, the notice of appeal must be filed in this office (at the address shown on the enclosed Form) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay pursuant to 43 C.F.R. Part 4, Subpart B § 4.21, during the time that your appeal is being reviewed by the Board, the petition must show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall be evaluated based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

Copies of the notice of appeal, petition for stay, and statement of reasons also must be submitted to the Office of the Regional Solicitor, Intermountain Region, 125 South State Street, Suite 6201, Salt Lake City, Utah 84138, at the same time the original documents are filed in this office.

If you have any further questions, please contact Pam Schuller of this office at (801) 539-4050.

/s/ Jenna Whitlock
Juan Palma
State Director

Enclosure:

1. Form 1842-1

cc: James Karkut, Office of the Solicitor, Intermountain Region,
125 South State Street, Suite 6201, Salt Lake City, Utah 84138

Enclosure 1
Form 1842-1

